

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,

I Additional District Munsif, Nagercoil.

Wednesday, on the 12th day of February 2025

I.A. No. 4 of 2023

in

O.S. No. 160 of 2023

CNR. No. TNKK04-000287-2023

N. Ganapathi

... Petitioner/Plaintiff

-vs-

1. The State of Tamil Nadu, rep. by

District Collector,

Kanyakumari at Nagercoil.

2. The Commissioner,

Nagercoil Corporation,

Nagercoil.

3. Sekar,

The Counsellor, Ward No. 8,

Nagercoil Corporation.

4. Jeyakumar

5. Sathyseelan

... Respondents/Defendants

This Petition came before this Court on 04.02.2025 for final hearing. Mr R. Suresh Babu, Advocate for the Petitioner, Mr. C. Johnson, Government Pleader for the 1st Respondent, Mr. Samuel Edwin, Advocate for the 2nd Respondent, Mr. Udaya

Kumar, Advocate for the Respondents 3 to 5,. Upon perusing the case records, having stood over for consideration, till this date, this Court hereby delivers the following:

ORDER

1. The Petitioner had filed the above Petition under Order XXVI Rule 9 and Section 151 Code of Civil Procedure, seeking an order appointing Advocate Commissioner, to make local investigation of the Plaint schedule property and to note the points mentioned in the Petition namely:-

1. To note the physical features of the Plaint schedule property.
2. To measure the Plaint schedule property as per lie and as per Will Deed in favour of the Plaintiff.
3. To note the existence of the Plaint schedule property.
4. To note the shortage of the area of the Plaint schedule property.
5. To prepare a plan as per lie and as per Will Deed.
6. To note such other points that are brought to the notice of the Commissioner at the time of his visit and to prepare a Plan as per lie and as per document and to file a report before this Court.

2. The Petitioner had stated that he had filed above suit for demarcation of the Plaint schedule property and for other reliefs. He stated that the Plaint schedule property namely old house bearing Door No. NMC 3/138/6-1 situated in three cents of land comprised an Old Sy. No. 2094-A, Re.Sy. No. P1/2-14 of Vadasery Village, originally belonged to one Narayanan, who purchased the same, among others under

Sale Deed dated 18.06.1964 bearing Doc. No. 2129 of 1964 so District Registrar, Kanyakumari. The Petitioner had also extracted the linear measurement of the property purchased by the said Narayanan.

3. The Petitioner had stated that from the said Narayanan, the Plaintiff's mother had purchased the same under Sale Deed dated 27.05.1967 bearing Doc. No. 2081 of 1967 District Registrar Office, Kanyakumari and she executed a Will Deed dated 24.07.1989 bearing Doc. No. 33 of 1989, wherein she had bequeathed the Petition schedule property, to the Petitioner and the remaining Two cents to the Petitioner's elder sister, by mentioning the boundaries. The Petitioner's mother died on 16.08.1982 and the Will came into effect and the Petitioner is enjoying the Petition schedule property absolutely. The Petitioner had further stated that the survey authorities during Re-survey wrongly stated that the vacant place, on the southern side, as pathway. The pathway area is within the three cents of land. There is no such pathway, on the southern side of the Plaintiff schedule property.

4. On the Southern and Western sides of the said Three cents property, the Property of Sinthamani exists. The survey authorities have did wrong measurements and prepared wrong plan. The Petitioner made representation to the concern authorities, to correct the error, committed by the Survey Department. However all efforts, made by the Petitioner, ended in vain. The existing pathway do not belong to Nagercoil Corporation. It falls within the Petitioner's Three cents of land. As the Respondents 2 to 5 have joined together, to encroach the same, for creating a new pathway through the Plaintiff's property, the Plaintiff had come before this Court and

filed the above suit. In order to elucidate the dispute between the parties, it is highly necessary to appoint an Advocate Commissioner, to make local investigation of the Plaintiff schedule property and to note the points as stated above.

3. The Respondent 3 to 5 have endorsed no counter. The 2nd Respondent endorsed that Commission may be issued with the help of the Taluk Surveyor. The 1st Respondent had not filed counter. The 1st Respondent was set exparte.

4. On perusal, the Petitioner had filed the above suit for demarcation and Permanent Injunction and Mandatory Injunction and for recovery of damages. The Petitioner claims that the Petitioner's title over the Plaintiff schedule property is traceable from the year 1962 and also claimed that the property situated on its southern side, forms part of the three cents of land, bequeathed by him under the Will Deed executed by his mother. The Petitioner had challenged the Re-Survey operation, as the classification of the Southern Boundary as pathway, as wrong. Since the availability of the Three cents of property, stated to have been acquired by the Petitioner, under the Will and traceable from the year 1962 by the Title Documents, if its availability is ascertained on site, the Petitioner's claim as to wrong classification of his Patta land as pathway, could be adjudicated.

5. Though the property is situated within Corporation limit, instead of ordering the Town Surveyor, to give assistance, ordering assistance by the Taluk Surveyor, as endorsed by the 2nd Respondent Counsel will be in the interest of justice, as because, the 2nd Respondent, Nagercoil Corporation is a party to the suit. In view of the discussions made above, this Court is of the considered view that the Petitioner is

entitled for the Petition relief.

In the result, the above Petition is allowed, and Advocate Mr. D.R. Bright Joel (Enr. No.MS. 3899/2023) (Mobile No.9885781807) Junior of Advocate C.Rajesh, is appointed as an Advocate Commissioner to note the Point Listed in the Petition, after giving due notice to both parties and file Report along with Plan, at the earliest. His remuneration is fixed at Rs.8,000/-(Rupees Eight Thousand Only), which sum, the Petitioner shall directly pay to the Advocate Commissioner and file Proof for Payment of the same. For filing proof as to payment of Commissioner's remuneration. Call on 20.02.2025

Dictated to the Steno-Typist, transcribed and typed by her, corrected and pronounced by me, in Open Court this, the 12th day of February 2025.

I Additional District Munsif,
Nagercoil.

Petitioner's side witnesses and documents : Nil.

Respondent's side witnesses and documents : Nil.

I Additional District Munsif,
Nagercoil.

I ADM, Nagercoil
Draft/Fair Order
I.A.No. 4/2023 in
O.S.No.160/2023.
Date: 12.02.2025.